

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 16:360. Deductibility of the~~[New York Franchise Tax on Business Corporations, the]~~ Massachusetts Corporate Excise Tax~~[,]~~ and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.

RELATES TO: KRS 141.010, 141.040

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.010(13)(d)1 prohibits any deduction for a state tax which is computed in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof~~[141.010(13)(a)] prohibits a deduction from gross income for state taxes computed, in whole or in part, by reference to gross or net income~~. This administrative regulation establishes the requirements for the deductibility of the portion of the~~[New York Franchise Tax on Business Corporations computed on the subsidiary capital base, the]~~ Massachusetts Corporation Excise Tax and West Virginia Business and Occupations Tax.

Section 1.~~[The portion of the New York Franchise Tax on Business Corporations computed on the subsidiary capital base under New York Tax Law Section 210, Subdivision 1(e), shall be deductible in computing Kentucky net income.~~

~~Section 2.]~~ The Massachusetts Corporation Excise Tax imposed by Massachusetts General Law Chapter 63, Sections 32 and 39 shall be deductible, or not deductible, as follows:

- (1) Any amount of the tax paid that is based on tangible property shall be deductible.
- (2) Any amount of the tax paid that is based on net worth shall be deductible.
- (3) Any amount of the tax paid that is based on gross or net income shall not be deductible.

Section 2~~[3]~~. The West Virginia Business and Occupation Tax imposed by West Virginia Code 11-13-2 on utilities shall be deductible, or not deductible, as follows:

- (1) Any amount of tax paid by electric power producers based upon average taxable generating capacity shall be deductible.
- (2) Any amount of tax paid by electric power distributors based on kilowatt hour shall be deductible.
- (3) Any amount of tax paid by a natural gas storage business based on the amount of gas in the storage facility or the average monthly tax paid for a five-year period shall be deductible.
- (4) Any amount of tax paid by a manufacturer or producer of synthetic fuels that is based on the weight of the fuel manufactured or produced shall be deductible.
- (5) Any amount of tax paid by a public service company or utility business that is based on gross or net income shall not be deductible.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administra-

tive regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation removes regulatory language related to the portion of the New York Franchise Tax on Business Corporations that was computed on the subsidiary capital base under New York Tax Law Section 210, Subdivision 1(e), which was repealed in 2014.

(b) The necessity of this administrative regulation: To provide Kentucky taxpayers with the most up to date information possible regarding tax administration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It removes repealed language to be consistent with current language.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment only removes language that has been repealed pursuant to the 2014 New York State corporate tax reform under 2014 Chapter 59-Part A.

(b) The necessity of the amendment to this administrative regulation: It is necessary to remove repealed language to avoid confusion with the taxpayer and provide the most up to date information possible.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the regulation to be in compliance with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: By providing corrected language, there will be less confusion among taxpayers when filing their taxes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses subject to the Massachusetts Corporate Excise Tax and West Virginia Business and Occupations Tax will continue to be affected by this regulation. This administrative regulation only removes regulatory language related to the portion of the New York Franchise Tax Law Section 210, Subdivision 1(e), which was repealed in 2014 effective for taxable years on or after January 1, 2015. The number of businesses affected is undeterminable as this number could change frequently.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by ei-

ther the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will now only govern the deductibility of the Massachusetts Corporate Excise Tax and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear and updated information when referencing this administrative regulation for guidance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are expected.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental budgetary funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. All taxpayers required to file forms regarding the taxes affected by this regulation will all be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Under 2014 Chapter 59-Part A, the New York State legislature repealed the portion of the New York Franchise Tax on business corporations that was computed on the subsidiary capital base for tax years beginning on or after January 1, 2015.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no impact on the expenditures or revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: